

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

WILLIAM J. WAGNER,

Plaintiff,

v.

Civil Action No.1:15-cv-633-FPG

CHIARI & ILECKI, LLP,

Defendant.

AFFIDAVIT OF WILLIAM J. WAGNER

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:

William J. Wagner, being duly sworn, deposes and says:

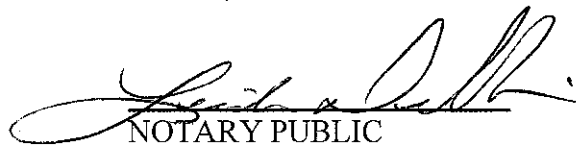
1. My name is William J. Wagner. My father's name was Raymond Francis Wagner. I am not a "Jr.," and have never been referred to as a "Jr."
2. Attached hereto are redacted copies of my Social Security card and drivers license, which provide proof of my date of birth, address, and verify that my Social Security number is not the same as William J. Wagner, Jr., the individual that the Defendant is attempting to collect money from.
3. I have never done business with M. J. Peterson and do not owe them money.
4. I have never met, and do not know William J. Wagner, Jr., and there is no William J. Wagner, Jr. in my family.
5. October 23, 1950. I have attached a copy of my Social Security card and drivers license as an exhibit.
6. I was married in 1971 to Julia L. Vifialkowski. We had two children, to wit: William Gregory Wagner, and Andrew Richard Wagner. Neither of them were ever referred to as a "Jr."

7. On August 14, 1984, Julia L. Wagner and I purchased 5419 Roberts Road, Hamburg, New York. We took out a mortgage, the proceeds of which were used to purchase the property.
8. I paid off the mortgage on the Roberts Road property in 1994.
9. I have continuously resided at 5419 Roberts Road, Hamburg, New York from September of 1984 to the present date, and have not resided at any other address during that time.
10. On November 18, 2013, Julia L. Wagner and I took out a home equity loan, which was secured by 5419 Roberts Road, Hamburg, New York.
11. In March 19, 2015, Julia L. Wagner and I took out a home equity line of credit mortgage. The March 19, 2015 mortgage continues to be outstanding.
12. I was divorced from Julia L. Wagner, and in connection with the settlement terms of the divorce, she transferred her interest to me on April 23, 2015.
13. My son, William Gregory Wagner, lived at 5419 Roberts Road, Hamburg, New York from 1984 through approximately 1998, when he joined the service, and has not lived in New York State since that time.
14. My son, Andrew Richard Wagner, moved into 5419 Roberts Road, Hamburg, New York when we purchased the property. He has moved in and out of the premises since that time, but has resided there continuously since at least 2012.
15. With the exception of my Mother-in Law for a brief period of time, nobody other than myself, Julia Wagner, and my two children have resided at 5419 Roberts Road, Hamburg, New York.
16. The Defendant mailed me a collection letter in February of 2015 that I received on February 12, 2015. The letter was addressed to William J. Wagner, Jr., and referenced a debt that he owed to M. J. Peterson. I understood at that time that they were not attempting to collect a debt from me personally.
17. On February 12, 2015, at approximately 10:34 a.m., I called the Defendant's office, and spoke to a woman named Karen.
18. During my telephone conversation with Karen, I informed her that I was not William J. Wagner, Jr., and not the debtor they were looking for. I provided her with a portion of my Social Security number, and she confirmed that I was the person they were looking for, and that she would notify the attorneys.

19. It my understanding, based on my conversation with Karen, that the Defendant was satisfied that I was not the debtor since our Social Security numbers did not match, and that their activity aimed at me would stop.
20. A few days after my conversation with Karen, I received a notice from the Post Office indicating that a certified letter from 14 Lafayette Square, Ste. 1440 addressed to William J. Wagner, Jr. was available to be picked up at the Post Office. A copy of the notice is attached hereto as an exhibit. I knew that the letter had been sent by the Defendant, but assumed that there was no need to contact them given my conversation with Karen, which had led me to believe the matter had been taken care of.
21. On March 19, 2015, I received another notice from the Post Office stating that they were holding a certified letter addressed to W. Wagner, Jr. and stamped "FINAL NOTICE." Although the notice did not have return address, I assumed it had been mailed to my address by the Defendant.
22. I called the Defendant again on March 19, 2015 and spoke to Kristian. I told Kristian that I had received another notice from the Post Office and that I was very upset that they continued to contact me. I further informed Kristian that I had previously given a different representative of the Defendant a portion of my Social Security number and my date of birth, which did not match that of the individual they were trying to collect from. Kristian informed me that an email would be sent to "Mr. Ilecki" that I had a different Social Security number, date of birth, and address than that of the debtor. Kristian stated that I could provide my Social Security card and drivers license "if I would like." I never agreed to provide those documents.
23. I believed at this point that the Defendant was harassing me, and trying to collect money from me.
24. On June 17, 2015, a process server came to my home served me with a Subpoena Duces Tecum. The subpoena required the attendance of William J. Wagner, Jr. at a debtors examination, and to provide documents regarding his finances. Although the papers were directed to William J. Wagner, Jr., I believed that I was required to respond to the subpoena because they had been personally handed to me. I also became very upset.
25. On June 17, 2015, I again called the office of the Defendant and spoke to Karen and informed her I had been served with papers. I also told her that I was not the debtor, that no "Jr." lived with me, that there no "Jr." in the family, and that I thought they were harassing me. I also told her that I would be contacting an attorney.

L. William J. Wagner

Sworn to before me this
14th day of December, 2016


NOTARY PUBLIC

LINDA DEDLINE
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
MY COMMISSION EXPIRES MAY 18 2019